

§ 77.5

this section, the attorney is encouraged to consult with a supervisor or Professional Responsibility Officer to determine the best course of conduct.

(d) *Rules that impose an irreconcilable conflict.* If, after consideration of traditional choice-of-law principles, the attorney concludes that multiple rules may apply to particular conduct and that such rules impose irreconcilable obligations on the attorney, the attorney should consult with a supervisor or Professional Responsibility Officer to determine the best course of conduct.

(e) *Supervisory attorneys.* Each attorney, including supervisory attorneys, must assess his or her ethical obligations with respect to particular conduct. Department attorneys shall not direct any attorney to engage in conduct that violates section 530B. A supervisor or other Department attorney who, in good faith, gives advice or guidance to another Department attorney about the other attorney's ethical obligations should not be deemed to violate these rules.

(f) *Investigative Agents.* A Department attorney shall not direct an investigative agent acting under the attorney's supervision to engage in conduct under circumstances that would violate the attorney's obligations under section 530B. A Department attorney who in good faith provides legal advice or guidance upon request to an investigative agent should not be deemed to violate these rules.

§ 77.5 No private remedies.

The principles set forth herein, and internal office procedures adopted pursuant hereto, are intended solely for the guidance of attorneys for the government. They are not intended to, do not, and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law by a party to litigation with the United States, including criminal defendants, targets or subjects of criminal investigations, witnesses in criminal or civil cases (including civil law enforcement proceedings), or plaintiffs or defendants in civil investigations or litigation; or any other person, whether or not a party to litigation with the United States, or their counsel; and shall not be a basis for dismissing

28 CFR Ch. I (7–1–05 Edition)

criminal or civil charges or proceedings or for excluding relevant evidence in any judicial or administrative proceeding. Nor are any limitations placed on otherwise lawful litigative prerogatives of the Department of Justice as a result of this part.

PART 79—CLAIMS UNDER THE RADIATION EXPOSURE COMPENSATION ACT

Subpart A—General

Sec.

79.1 Purpose.

79.2 General definitions.

79.3 Compensable claim categories under the Act.

79.4 Determination of claims and affidavits.

79.5 Requirements for medical documentation, contemporaneous records, and other records or documents.

Subpart B—Eligibility Criteria for Claims Relating to Leukemia

79.10 Scope of subpart.

79.11 Definitions.

79.12 Criteria for eligibility for claims relating to leukemia.

79.13 Proof of physical presence for the requisite period and proof of participation onsite during a period of atmospheric nuclear testing.

79.14 Proof of initial exposure prior to age 21.

79.15 Proof of onset of leukemia more than two years after first exposure.

79.16 Proof of medical condition.

Subpart C—Eligibility Criteria for Claims Relating to Certain Specified Diseases Contracted After Exposure in an Affected Area ("Downwinders")

79.20 Scope of subpart.

79.21 Definitions.

79.22 Criteria for eligibility for claims relating to certain specified diseases contracted after exposure in an affected area ("downwinders").

79.23 Proof of physical presence for the requisite period.

79.24 Proof of initial or first exposure after age 20 for claims under § 79.22(b)(1).

79.25 Proof of onset of leukemia at least two years after first exposure, and proof of onset of a specified compensable disease more than five years after first exposure.

79.26 Proof of medical condition.

79.27 Indication of the presence of hepatitis B or cirrhosis.

Department of Justice

§ 79.2

Subpart D—Eligibility Criteria for Claims by Onsite Participants

- 79.30 Scope of subpart.
- 79.31 Definitions.
- 79.32 Criteria for eligibility for claims by onsite participants.
- 79.33 Proof of participation onsite during a period of atmospheric nuclear testing.
- 79.34 Proof of medical condition.
- 79.35 Proof of onset of leukemia at least two years after first exposure, and proof of onset of a specified compensable disease more than five years after first exposure.
- 79.36 Indication of the presence of hepatitis B or cirrhosis.

Subpart E—Eligibility Criteria for Claims by Uranium Miners

- 79.40 Scope of subpart.
- 79.41 Definitions.
- 79.42 Criteria for eligibility for claims by miners.
- 79.43 Proof of employment as a miner.
- 79.44 Proof of working level month exposure to radiation.
- 79.45 Proof of primary lung cancer.
- 79.46 Proof of nonmalignant respiratory disease.

Subpart F—Eligibility Criteria for Claims by Uranium Millers

- 79.50 Scope of subpart.
- 79.51 Definitions.
- 79.52 Criteria for eligibility for claims by uranium millers.
- 79.53 Proof of employment as a miller.
- 79.54 Proof of primary lung cancer.
- 79.55 Proof of nonmalignant respiratory disease.
- 79.56 Proof of primary renal cancer.
- 79.57 Proof of chronic renal disease.

Subpart G—Eligibility Criteria for Claims by Ore Transporters

- 79.60 Scope of subpart.
- 79.61 Definitions.
- 79.62 Criteria for eligibility for claims by ore transporters.
- 79.63 Proof of employment as an ore transporter.
- 79.64 Proof of primary lung cancer.
- 79.65 Proof of nonmalignant respiratory disease.
- 79.66 Proof of primary renal cancer.
- 79.67 Proof of chronic renal disease.

Subpart H—Procedures

- 79.70 Attorney General's delegation of authority.
- 79.71 Filing of claims.
- 79.72 Review and resolution of claims.
- 79.73 Appeals procedures.

- 79.74 Representatives and attorney's fees.
- 79.75 Procedures for payment of claims.
- Appendix A to Part 79—FVC and FEV-1 Lower Limits of Normal Values
- Appendix B to Part 79—Blood Gas Study Tables
- Appendix C to Part 79—Radiation Exposure Compensation Act Offset Worksheet—On Site Participants

AUTHORITY: Secs. 6(a), 6(i) and 6(j), Pub. L. 101-426, 104 Stat. 920, as amended by secs. 3(c)–(h), Pub. L. 106-245, 114 Stat. 501 and sec. 11007, Pub. L. 107-273, 116 Stat. 1758 (42 U.S.C. 2210 note; 5 U.S.C. 500(b)).

SOURCE: Order No. 2711-2004, 69 FR 13634, Mar. 23, 2004, unless otherwise noted.

Subpart A—General

§ 79.1 Purpose.

The purpose of the regulations in this part is to implement the Radiation Exposure Compensation Act ("Act"), as amended by the Radiation Exposure Compensation Act Amendments of 2000 ("2000 Amendments") and by the 21st Century Department of Justice Appropriations Authorization Act ("Appropriations Authorization Act"). The Act authorizes the Attorney General of the United States to establish procedures for making certain payments to qualifying individuals who contracted one of the diseases listed in the Act. The amount of each payment and a general statement of the qualifications are indicated in § 79.3(a). The procedures established in this part are designed to utilize existing records so that claims can be resolved in a reliable, objective, and non-adversarial manner, quickly and with little administrative cost to the United States or to the person filing the claim.

§ 79.2 General definitions.

(a) *Act* means the Radiation Exposure Compensation Act, Public Law 101-426, as amended by sections 3139 and 3140 of Public Law 101-510, the Radiation Exposure Compensation Act Amendments of 2000, Public Law 106-245 (see 42 U.S.C. 2210 note), and the 21st Century Department of Justice Appropriations Authorization Act, Public Law 107-273.

(b) *Child* means a recognized natural child of the claimant, a stepchild who lived with the claimant in a regular parent-child relationship, or an adopted child of the claimant.